The opinion in support of the decision being entered today was ***not*** written for publication and is ***not*** binding precedent of the Board.

Paper No. 34

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. DEATON

Appeal No. 2002-1819
Application 08/935,116

ON BRIEF[1]

Before JERRY SMITH, LEVY, and BLANKENSHIP, ***Administrative Patent Judges.***

LEVY, ***Administrative Patent Judge.***

REMAND

This is an appeal from the examiner's rejection of claims 8-39, all of the claims remaining in the application. Claims 1-7 have been canceled.

[1] The Oral Hearing scheduled for April 16, 2003 was vacated by the Board in view of our determination to remand the application to the Technology Center, for the reasons, infra.

The appellant's invention is related to a system, method and database for processing transactions.

Claim 8 is illustrative:

8. A system for accumulating customer transaction data at the point-of-sale in a retail establishment and for effecting customer promotion on the basis thereof, comprising:

a terminal for entering unique customer identification codes from customer identification presented at the point-of-sale in a retail transaction;

means for allowing entry of customer transaction data;

a processor and a memory responsive to said terminal and said means for allowing entry for creating a database for a plurality of the retail establishment's customers' transaction data from prior shopping visits, such that data regarding individual customer's prior transaction are stored in association with said individual customer's unique identification code; and

circuitry responsive to said processor, memory, and database for generating a customer information response signal at the point-of-sale during said individual customer's transaction in said retail establishment upon detection of a unique identification code of said individual customer, said signal being related to said individual customer's transaction data in shopping visits prior to the current shopping visit, and said signal providing information at said point-of-sale terminal derived from said database and useful for effectuating targeted customer promotion.

The Examiner relies on the following references:

Creekmore	4,109,238	Aug. 22, 1978
Goldman et al. (Goldman)	Re. 30,580	Apr. 14, 1981
Tai	4,908,761	Mar. 13, 1990
Off et al. (Off)	4,910,672	Mar. 20, 1990

Deaton et al. (Deaton)	5,201,010	Apr. 6, 1993
Deaton et al. (Deaton)	5,305,196	Apr. 19, 1994
Deaton et al. (Deaton)	5,592,560	Jan. 7, 1997
Deaton et al. (Deaton)	5,659,469	Aug. 19, 1997

Claims 15 and 16 stand rejected under the judicially created doctrine of double patenting over claim 12 of U.S. Patent No. 5,659,469 (Deaton) on the ground that appellant's claims, if allowed, would improperly extend the "right to exclude" already granted by the Deaton patent.

In addition, claims 33-39 stand rejected under the judicially created doctrine of double patenting over claims 1-3 of U.S. Patent No.5,592,560 (Deaton) on the ground that appellant's claims, if allowed, would improperly extend the "right to exclude" already granted by the Deaton patent. The Examiner has based these double patenting rejections on the rationale that the subject matter recited in Appellant's claims 12 through 22 is fully disclosed in the Barrett patent and is covered by the patent. The Examiner cites In re Schneller, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See pages 9, 10, 27-30, and 33-36 of the answer.

Reason for the Remand

Manual of Patent Examining Procedure (MPEP) § 804 (8th ed., Aug. 2001) (which was in effect at the time that the examiner's answer was written) states the following at 800-27:

> The decision in *In re Schneller* did not establish a rule of general application and thus is limited to the particular set of facts set forth in that decision. The court in *Schneller* cautioned "against the tendency to freeze into rules of general application what, at best, are statements applicable to particular fact situations." *Schneller*, 397 F.2d at 355, 158 USPQ at 215. Nonstatutory double patenting rejections based on *Schneller* **will be rare.** The Technology Center (TC) Director must approve any nonstatutory double patenting rejections based on *Schneller*. If an examiner determines that a double patenting rejection based on *Schneller* is appropriate in his or her application, the examiner should first consult with his or her supervisory patent examiner (SPE). If the SPE agrees with the examiner then approval of the TC Director must be obtained before such a nonstatutory double patenting rejection can be made.

From our review of the record, we find no evidence of approval, by the Director of the Technology Center, of the double-patenting rejections based upon In re Schneller, as required by MPEP § 804.

Accordingly, we remand the application to the examiner for the examiner to consult with his or her SPE, in accordance with the guidlines provided in the MPEP, regarding the propriety of the rejections based upon Schneller, and to obtain the approval

of the Technology Center Director if the Examiner and the SPE desire to maintain the rejections.

CONCLUSION

This application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01 (Eighth Edition, Aug. 2001), item (D). It is important that the Board of Patent Appeals and Interferences be promptly informed of any action affecting the appeal in this case.

REMANDED

JERRY SMITH)
Administrative Patent Judge)
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STUART S. LEVY) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
HOWARD B. BLANKENSHIP)
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